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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,533	12/21/2001	Erik Spangenberg	742111-5	2130
22204	7590	02/11/2004		EXAMINER
NIXON PEABODY, LLP			NGUYEN, THUKHANH T	
401 9TH STREET, NW				
SUITE 900			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20004-2128			I722	

DATE MAILED: 02/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/024,533	Applicant(s) SPANGENBERG ET AL.
	Examiner Thu Khanh T. Nguyen	Art Unit 1722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 25 November 2003.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,2,5-7 and 9 is/are rejected.
- 7) Claim(s) 3 and 8 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date: _____.
- 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(c) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-2 and 4 are rejected under 35 U.S.C. 102(e) as being anticipated by the Japanese reference (2000-9292).

The Japanese reference teaches a frame system for supporting apparatus, comprising a bottom frame member (Figs. 3-4, 23), a top frame member (20), and columns connecting the bottom and the top frame; wherein the bottom frame (23) and the top frame (20) are formed of parallel plates (28, 37) that are connected by a plurality of longitudinal plates (31, 60) and a plurality of transverse plates (33, 60); wherein the longitudinal plates and the transverse plates are joined in a mortise joint, in which the plates having parts constituted from each other (sections [0028-29]), so that the transverse plates extend to an edge of the bottom plates through the longitudinal plates (Fig. 1); wherein the plates are rigidly connected so that less welding is required (section [0012]).

3. Claims 1-2, 4-7 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by the admitted prior art (Specification, pages 1-2).

The admitted prior art teaches a molding apparatus including a vibration arrangement, a conveying means, an upper and lower mold parts, a concrete hopper, and a retainer for supporting the upper mold part; and a support frame comprising a bottom frame member (34, 36, 38), a top frame member (30), columns (32) connecting the bottom and the top frame; wherein the bottom frame part is formed by parallel bottom plates (38) interconnected by a plurality of longitudinal plates (36) and transverse plates (34).

In regard to the flame cut bottom plates, the method of how the plates were made has no patentable weight in an apparatus claim. The claims have to show how the apparatus structure different than the prior art structure, not how they are made: weld or flame cut. “[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted)

Allowable Subject Matter

4. Claims 3 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach or suggest that the longitudinal plates and the transverse plates are joined in a mortise joint so that the transverse plates extend to an edge of the bottom plates through the longitudinal plates to form a reinforced support for the bottom plates at an external side of the bottom frame member.

Response to Arguments

6. Applicant's arguments filed November 25, 2003 have been fully considered but they are not persuasive.

7. The applicants have argued that the prior art fails to disclose the top frame and the bottom frame are connected by uninterrupted longitudinal and transverse plates. Instead, the Japanese reference and the admitted prior art disclose a plurality of plates being welded together to form a support frame.

8. The examiner understood that by joining a plurality of transverse plates and the longitudinal plates by mortise joints would remove the forces from welding zones during the compression and vibration. However, by having the plates connected uninterruptedly do not preclude the fact that the plates could be welded together.

9. Further, the Japanese reference has taught that the frame is formed by a plurality of H beams, piping and wiring holding rigidity together while the welding parts are reduced compared with conventional frames. The Japanese reference also disclose a plurality of transverse plates, each of them is connected to the longitudinal plates uninterruptedly. The current claims do not claim that the transverse plates are extended from one longitudinal plate to the other longitudinal

plate. Therefore, each of the small transverse plates in the Japanese reference is still connected the longitudinal plates and the flame cut plates uninterrupted. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Similarly, the Admitted prior art discloses a plurality of uninterrupted plates (34, 36) welded together to form a supported frame for supporting a concrete block molding apparatus. The language of the claims have not distinguish the claims over the prior art, and therefore, are still rejected over the Admitted prior art and the Japanese reference.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 1722

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thu Khanh T. Nguyen whose telephone number is 571-272-1136. The examiner can normally be reached on Monday- Friday, 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TN


ROBERT DAVIS
PRIMARY EXAMINER
GROUP 1000 1705

2/7/04